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ORIGIN EB-07

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L/AF:MMATHESON

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FM SECSTATE WASHDC

TO AMEMBASSY TANANARIVE IMMEDIATE

C O N F I D E N T I A L STATE 197250

E.O. 11652: GDS

TAGS: EINV

SUBJECT: OIL COMPANY NATIONALIZATIONS

REFS: (A) TANANARIVE 1144, (B) TANANARIVE A-043,
(C) TANANARIVE 1054, (D) STATE 81210, (E) STATE A-10523
(DECEMBER 28, 1973)

1. WE HAVE BEEN FOLLOWING CLOSELY EMBASSY REPORTS OF
GDRM TAKEOVER OF FOREIGN OIL COMPANIES, WHICH ENCOMPASSES
THE MARKETING FACILITIES OF ESSO AND CALTEX, AS WELL AS
THE MINORITY INTERESTS OF THOSE COMPANIES IN THE REFINERY
AT TAMATAVE. WE ARE CONCERNED BY THE APPARENTLY UNFAVOR-
ABLE PROSPECTS FOR SUCCESSFUL NEGOTIATIONS (REF A), AND
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BY THE POSSIBILITIES THAT THE COMPANIES WILL NOT BE

ADEQUATELY COMPENSATED, AND THAT THE GDRM MAY ATTEMPT TO OFFSET AMOUNTS OWED THE COMPANIES WITH SPURIOUS OR UNREASONABLE DEDUCTIONS FOR ALLEGED FOREIGN EXCHANGE VIOLATIONS (AS REPORTED REFS B AND C, CONTEMPLATED FINES MAY POSSIBLY BE AS HIGH AS 8 AND 17 MILLION DOLLARS FOR ESSO AND CALTEX, RESPECTIVELY, AMOUNTS WHICH EXCEED THE BOOK VALUE OF THE COMPANIES' ASSETS IN MADAGASCAR).

2. UNDER THESE CIRCUMSTANCES, WE BELIEVE IT IS IMPORTANT FOR THE GDRM TO BE INFORMED PROMPTLY OF USG POLICY CONCERNING COMPENSATION FOR EXPROPRIATED PROPERTY. THE GDRM

SHOULD ALSO BE MADE AWARE OF THE POSSIBLE ADVERSE CONSEQUENCES UNDER U.S. LEGISLATION SHOULD PROMPT, ADEQUATE, AND EFFECTIVE COMPENSATION NOT BE FORTHCOMING. EXISTING LAWS (THE HICKENLOOPER AND GONZALEZ AMENDMENTS, AND SECTION 502(B)(4) OF THE TRADE ACT OF 1974, RESPECTIVELY) CALL FOR THE USG TO SUSPEND BILATERAL ASSISTANCE, TO VOTE NEGATIVELY ON LOANS UNDER CONSIDERATION IN INTERNATIONAL DEVELOPMENT BANKS, AND TO DENY ELIGIBILITY FOR TRADE PREFERENCES, TO COUNTRIES WHICH EXPROPRIATE AMERICAN-OWNED PROPERTY WITHOUT TAKING THE REQUIRED STEPS TOWARD PAYMENT OF COMPENSATION. THERE IS NO EXPRESS OR AUTOMATIC LINKAGE BETWEEN THESE PROVISIONS (AND THE GONZALEZ AMENDMENT HAS NO "NATIONAL INTEREST" OR "NATIONAL ECONOMIC INTEREST" WAIVER AS DO HICKENLOOPER AND 502(B)(4), RESPECTIVELY), BUT THEY ARE SUFFICIENTLY SIMILAR IN LANGUAGE AND IN INTENTION THAT THE APPLICATION OF ANY ONE OF THEM WOULD MAKE IT DIFFICULT TO AVOID APPLYING THE OTHERS AS WELL. F.Y.I. SINCE EACH OF THESE LAWS APPLIES ONLY TO TAKEOVERS OF PROPERTIES WHICH ARE 50 PERCENT OR MORE BENEFICIALLY U.S.-OWNED, THEY DO NOT COME INTO PLAY WITH RESPECT TO THE MINORITY INTERESTS OF ESSO AND CALTEX IN THE TAMATAVE REFINERY. END F.Y.I.

3. ACCORDINGLY, EMBASSY IS REQUESTED TO BRING THE FOLLOWING POINTS TO THE ATTENTION OF APPROPRIATE GDRM OFFICIALS ASAP, EITHER BY DIPLOMATIC NOTE OR, AT YOUR DISCRETION, ORALLY WITH AN ACCOMPANYING AIDE MEMOIRE:

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A. THE USG NOTES THAT THE RECENT NATIONALIZATIONS OF FOREIGN OIL COMPANIES IN MADAGASCAR HAVE AFFECTED THE MARKETING PROPERTIES OF TWO U.S. COMPANIES, ESSO AND CALTEX, AS WELL AS THE MINORITY INTERESTS OF THOSE COMPANIES IN THE REFINERY AT TAMATAVE.

B. THE USG ALSO NOTES WITH CONCERN ITS UNDERSTANDING THAT THE GDRM APPARENTLY IS CONSIDERING THE IMPOSITION

OF SUBSTANTIAL PENALTIES ON EACH OF THESE FIRMS FOR ALLEGED EXCHANGE VIOLATIONS, IN AMOUNTS WHICH MAY EXCEED THE BOOK VALUE OF THE COMPANIES' INVESTMENTS IN MADAGASCAR.

C. IT IS THE POSITION OF THE USG THAT INTERNATIONAL LAW REQUIRES PAYMENT OF PROMPT, ADEQUATE, AND EFFECTIVE COMPENSATION FOR U.S.-OWNED PROPERTY NATIONALIZED ABROAD. THIS IS REFLECTED IN LEGISLATION WHICH CALLS FOR THE USG TO SUSPEND BILATERAL ASSISTANCE, TO VOTE NEGATIVELY ON LOANS UNDER CONSIDERATION IN INTERNATIONAL DEVELOPMENT

BANKS, AND TO DENY ELIGIBILITY FOR TRADE PREFERENCES, TO COUNTRIES WHICH EXPROPRIATE AMERICAN-OWNED PROPERTY WITHOUT TAKING THE REQUIRED STEPS TOWARD PAYMENT OF FAIR COMPENSATION.

D. THE USG BELIEVES IT IS IN THE INTEREST OF BOTH THE UNITED STATES AND THE DEMOCRATIC REPUBLIC OF MADAGASCAR THAT ESSO AND CALTEX BE FAIRLY COMPENSATED FOR THE NATIONALIZATION OF THEIR PROPERTIES IN MADAGASCAR, AND ENCOURAGES THE GDRM TO ENTER INTO DISCUSSIONS WITH REPRESENTATIVES OF EACH OF THEM LEADING TOWARD A PROMPT AND MUTUALLY-SATISFACTORY RESOLUTION OF OUTSTANDING ISSUES.

4. COPIES OF THE PERTINENT LEGISLATION ARE BEING POUCHED TO THE EMBASSY AND THESE SHOULD BE MADE AVAILABLE TO APPROPRIATE GDRM OFFICIALS WHEN THEY ARE RECEIVED. WE ALSO BELIEVE THAT IT WOULD BE USEFUL AT THIS TIME TO DELIVER TO THE GDRM, IN WRITING, THE STATEMENT OF USG POLICY ON VALUATION OF EXPROPRIATED PROPERTY TRANSMITTED
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REF D. THIS MAY BE DONE SIMULTANEOUSLY WITH THE ABOVE DEMARCHE OR, AT EMBASSY'S DISCRETION, AT ANOTHER APPROPRIATE TIME.

5. FOR EMBASSY'S INFORMATION, CIRCULAR GUIDANCE ON HANDLING OF INVESTMENT DISPUTES PREVIOUSLY PROVIDED ALL DIPLOMATIC POSTS BY REF E. WE APPRECIATE EMBASSY EFFORTS TO HELP RESOLVE THESE CASES, AND WILL CONTINUE TO FOLLOW DEVELOPMENTS CLOSELY. HABIB

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